SINGLE BENCH

C.S. 9001/-

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

WRIT PETITION NO. 5285 /2005

(Petition under Article 226/227 of the Constitution of India)

PETITIONERS :

1) Umesh Kumar Singh, aged about 46 years, S/o laten Shri Vedanand Kunwar, at present working as a Deputy Ranger, Social Forestry Division, Forest Division Jagadalpur, Distt. Bastar, C.G.

2) M.M. Upadhyay, aged about 55 years, S/o Dalsigar Upadhyay, at present working as a Deputy Ranger, Bijapur Forest Division, Distt. Dantewada, C.G.

3) Parmanand Tiwari, aged about 54 years, S/o late Kapil Dev Tiwari, at present working as a Deputy Ranger, Forest Division Datewada, Distt. Dantewada, C.G.

4) Janardan Singh, aged about 56 years, S/o late Baijnath Singh, at present working as Deputy Ranger, Bastar Forest Division at Jagadalpur, Distt. Bastar, C.G.

5) Puranlal Soni, aged about 52 years, S/o late Tulsiram Soni, at present working as Dy. Ranger, Bastar Forest Division at Jagadalpur, Distt. Bastar, C.G.

6) Sundar Singh Simon, aged about 55 years, S/o late Simon, at present working as Dy. Ranger, Bastar Forest Division at Jagadalpur, Distt. Bastar, C.G.

7) Subramaniyam Rao, aged about 48 years, S/o late Jagannath Rao, at present working as Dy. Ranger, Dantewada, Forest Division at Distt. Dantewada, C.G.

P.R. No. 5539/05 Presented by Sh. Krishna Kabra dated 22/10/05

OATH COMMISSIONER APARNA MALAVIYA CC-1073/96 22/10/05 Bilaspur Chhattisgarh

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8) Sahdeo Kumar Nag, aged about 52 years, S/o Shri Chandan Nag, Bastar (G) Forest Division at Jagadalpur, Distt. Bastar, C.G.

9) Vinay Kumar Chakravorti, aged about 44 years, S/o late B.C. Chakravorti, at present working as Dy. Ranger, Indrawati Tiger Reserve, Forest Division Bijapur, Distt. Dantewada, C.G.

VERSUS

RESPONDENTS : 1) State of Chhattisgarh, through the Secretary, Forest Department, D.K.S. Bhawan, Raipur (C.G.)

2) Chief Conservator of Forest, Jail Road, Raipur, Distt. Raipur, C.G.

3) Conservator of Forest, Jagadalpur Circle at Jagadalpur, Distt. Bastar, C.G.

OATH COMMISSIONER
APARNA MALVIYA
CC 2073/96
22/10/05
Bilaspur Chhattisgarh

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT OF MANDAMUS/ CERTIORARI, ORDER/ORDERS, DIRECTION/DIRECTIONS ETC.

(101)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 5285/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

27.10.2005

Shri Vishnu Koshta, counsel for the petitioners.

Shri P.S. Koshy, Dy. Advocate General for the State on advance copy.

I.A. No. 9142 of 2005:

This is an application for urgent hearing.

The matter is taken up on Board. This interim application stands disposed of.

W.P. No. 5285 of 2005:

Heard on admission.

Leaned counsel for the petitioners submits that the petitioners were promoted to the post of Forest Dy. Rangers from Foresters vide orders dated 19.12.2000 and 10.12.2001 (Annexures- P/3 & P/4). He further submits that their orders of promotion were issued as an effect and consequence of Departmental Promotion Committee (DPC) which was held on 14.12.2000. He also submits that thereafter, memos have been issued to the petitioners vide Annexure-P/5-A to P/5-I (having common contents) that on examination made by the promotion examination committee and its recommendation dated 5.9.2005, it has been recommended that the aforesaid promotions of the petitioners have been effected by some mistake committed by the earlier D.P.C. and some senior persons to the petitioners have been left by the D.P.C. while considering the cases of the petitioners. He further submits that the petitioners have filed their reply on the notice/memos issued to them. He also submits that the promotion examination committee constituted by the Government was not a competent committee to examine the

(102)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 5285/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recommendations of the D.P.C, therefore no action can be taken on the report of this committee dated 5.9.2005. Learned counsel for the petitioners submits that though these grounds are available to the petitioners but the same have not been raised effectively by the petitioners in their reply/representations before the concerned authority.

I have heard the learned counsel for the petitioners at length.

The memos/notices (Annexure-P/5-A to P/5-I), in the opinion of this Court, are in form of the show-cause notices which intend as to why earlier promotion list may not be cancelled in view of the recommendations made by the promotion examination committee date 5.9.2005.

At this initial stage of notice, the law to be applied for entertainment of writ petition is now well settled. It has been held by the Apex Court that unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before

103

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 5285/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the aggrieved could approach the Court. ***(Please see JT 2004 (1) SC 206 in the matter of The Special Director and Anr. –V.- Mohd Ghulam Ghouse and Anr.)***

In view of the above judgment, I am not inclined to interfere with this writ petition at this stage.

At this stage, learned counsel for the petitioners submits that though the representations/replies have been filed by the petitioners before the concerned authority as stated above, but the points highlighted in this petition have not been raised effectively before the concerned authority, liberty be granted to the petitioners to file fresh reply/representation against the notice/memo dated 14.10.2005.

In light of the aforesaid submission, it is hereby directed that if the authority has not taken any decision so far, the petitioners shall be given an opportunity to file a fresh reply raising the point about constitution of the promotion examination committee and this point raised by the petitioners shall be duly considered by the authority before passing any order in the matter but if any decision has already been taken by the concerned authority, these observations/directions will have no force.

With the above observations/directions, the petition stands finally disposed of.

Consequently, M.W.P. No. 4267 of 2005 also stands disposed of.

Sd/-
Sunil Kumar Sinha
Judge

Vgtt
28/10/05
12/1/06